

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

ERIC MENDOZA,

Plaintiff,

v.

**Civil Action No.
9: 05-CV-1124 (TJM/DEP)**

**M. McGINNIS, Superintendent, Southport
Correctional Facility, *et al.*,**

Defendants..

**THOMAS J. McAVOY,
Senior United States District Judge**

DECISION & ORDER

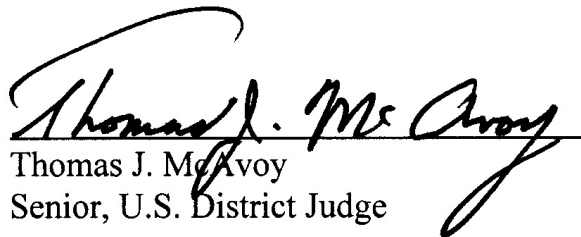
This *pro se* action brought pursuant to 42 U.S.C. § 1983 was referred by this Court to the Hon. David E. Peebles, United States Magistrate Judge, for a Report and Recommendation pursuant to 28 U.S.C. § 636(b) and Local Rule N.D.N.Y. 72.3(c). The Report and Recommendation dated July 24, 2008 recommended that Defendants' motion for summary judgment be granted and the action dismissed. No objections to the Report and Recommendation have been filed and Plaintiff's time to do so has expired. Furthermore, after examining the record, this Court has determined that the Report and Recommendation is not subject to attack for plain error or manifest injustice. Accordingly, the Court adopts the Report and Recommendation for the reasons stated therein.

It is therefore,

ORDERED that Defendants' motion for summary judgment (dkt. # 53) is **GRANTED**, and Plaintiff's complaint is **DISMISSED** in its entirety.

IT IS SO ORDERED

DATED: September 11, 2008


Thomas J. McAvoy
Senior, U.S. District Judge